

**TITLE 52
SOCIAL SECURITY**

**CHAPTER 52-01
DEFINITIONS AND GENERAL PROVISIONS**

52-01-01. Definitions. In the North Dakota unemployment compensation law, unless the context or subject matter otherwise requires:

1. "Annual payroll" means the total amount of taxable wages for employment paid by an employer during a twelve-month period ending on September thirtieth of any calendar year.
2. "Average annual payroll" means:
 - a. The annual payroll for the twelve-month period immediately preceding the computation date for an employer who has been liable for twelve but less than twenty-four months.
 - b. The average of the annual payrolls for the last two 12-month periods immediately preceding the computation date for an employer who has been liable for twenty-four but less than thirty-six months.
 - c. The average of the annual payrolls for the last three 12-month periods immediately preceding the computation date for an employer who has been liable for thirty-six months or more.
3. "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. In a combined-wage claim, the base period must be that of the paying state.
4. "Base-period employers" means the employers by whom an individual was paid the individual's base-period wages.
5. "Base-period wages" means the wages paid to an individual during the individual's base period for insured work.
6. "Benefit year" means the fifty-two-week period beginning the first week in which an insured worker first files a request for determination of the worker's insured status and thereafter the fifty-two-week period beginning the first week in which the individual next files such request after the end of the individual's last preceding benefit year. The filing of a notice of unemployment must be deemed a request for determination of insured status if a current benefit year has not previously been established. In a combined-wage claim, the benefit year must be that of the paying state. However, if the establishment of a benefit year for a fifty-two-week period under this subsection would result in overlapping any quarter of that base period with the base period of a subsequent valid claim, the benefit year must be fifty-three weeks. A subsequent benefit year cannot be established until the expiration of the current benefit year.
7. "Benefits" means the money payments payable to an individual with respect to the individual's unemployment as provided in chapter 52-06 and in the event of a disqualification for benefits as provided for in subsection 1, 2, or 3 of section 52-06-02, the payment of benefits must be postponed for the period of time prescribed therein.
8. "Bureau" means job service North Dakota bureau.

9. "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first.
10. "Computation date" means September thirtieth of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January first.
11. "Contributions" and "payments in lieu of contributions" each mean money payments required to be paid into the unemployment compensation fund, the first being in respect to wages paid for insured work in employment for employers who are on a tax-rated basis and the second being in respect to the reimbursement of benefits paid to employees of employers who are on a reimbursable basis, and, except when the result would be inconsistent with the provisions of unemployment compensation law pertinent to an employer on a reimbursable basis, the provisions of such law applicable to an employer on a tax-rated basis are equally applicable to an employer on a reimbursable basis, and conversely, except when the result would be inconsistent with the provisions of unemployment compensation law pertinent to an employer on a tax-rated basis, the provisions of such law applicable to an employer on a reimbursable basis are equally applicable to an employer on a tax-rated basis.
12. "Domestic service" means all service for a person in the operation and maintenance of a private household, local college club, or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise, or vocation.
13. "Educational institution" means an educational institution (including an institution of higher education as defined in section 3304(f) of the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.]) in which participants, trainees, or students are offered an organized course of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation, designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of instructors or teachers, and is approved, licensed, or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license, or issue a permit for the operation of a school.
14. "Employee" means every individual, whether citizen, alien, or minor, who performs services for an employer in an employment subject to the North Dakota unemployment compensation law and includes an officer of a corporation and a manager of a limited liability company that is treated as a corporation for purposes of federal income taxation or a manager of a limited liability company who is not a member.
15. "Employer" means:
 - a. Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year has or had in employment four or more individuals, irrespective of whether the same individuals are or were employed in each such day. After December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid for services in employment wages of one thousand five hundred dollars or more, or which for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual, irrespective of whether the same individual was in employment in each such day. For the purpose of this definition, if any week includes both December thirty-first and January first, the days that

precede January first must be deemed one calendar week and the days beginning January first another such week.

- b. Any individual who or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another who or which at the time of such acquisition was an employer subject to the provisions of the North Dakota unemployment compensation law, or who or which acquired a part of the organization, trade, or business of another which at the time of such acquisition was an employer subject to the provisions of the North Dakota unemployment compensation law if such other would have been an employer under subdivision a if such part had constituted its entire organization, trade, or business.
- c. Any individual who or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit an employer subject to the North Dakota unemployment compensation law, under subdivision a. After December 31, 1971, any individual who or employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit if such individual or employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for services in employment wages totaling one thousand five hundred dollars or more.
- d. Repealed by S.L. 1963, ch. 331, § 1.
- e. Any employing unit not an employer by reason of any of the provisions of this subsection for which services in employment are performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment compensation fund or an employing unit which, as a condition for approval of the North Dakota unemployment compensation law for full tax credit against the tax imposed by the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.], is required, pursuant to such Act, to be an "employer" under the North Dakota unemployment compensation law.
- f. Any employing unit which, having become an employer under any one of subdivision a, b, c, e, h, i, j, or k has not under chapter 52-05 ceased to be an employer subject to the North Dakota unemployment compensation law.
- g. For the effective period of its election pursuant to sections 52-05-02 and 52-05-03, any other employing unit which has elected to become fully subject to the North Dakota unemployment compensation law.
- h. Any employing unit for which service in employment, as defined in subdivision f of subsection 17, is performed after December 31, 1971.
- i. Any employing unit for which service in employment, as defined in subdivision g of subsection 17, is performed after December 31, 1971.
- j. Any employing unit for which agricultural labor as defined in subdivision m of subsection 17 is performed after December 31, 1977. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under subdivision a, h, i, or k, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, may not be taken into account. However, if an employing

unit is determined an employer of agricultural labor, such employing unit must be determined an employer for the purposes of subdivision a.

- k. Any employing unit for which domestic service in employment as defined in subdivision n of subsection 17 is performed after December 31, 1977. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivision a, h, i, or j, the wages earned or the employment of an employee performing domestic service after December 31, 1977, may not be taken into account.
 - l. The term "employer" includes an Indian tribe for which service in employment as defined under the North Dakota unemployment compensation law is performed.
16. "Employing unit" means any individual or type of organization including any partnership, association, trust, estate, joint-stock company, insurance company, corporation, or limited liability company, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had one or more individuals performing services for it within this state and:
- a. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state must be deemed to be performing services for a single employing unit for all the purposes of the North Dakota unemployment compensation law;
 - b. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 15, the employing unit, for all purposes of the North Dakota unemployment compensation law, must be deemed to employ each individual in the service of each such contractor for each day during which such individual is engaged solely in performing such work, except that each such contractor or subcontractor who is an employer by reason of subsection 15 is liable alone for the employer's contributions measured by wages to individuals in the person's service; and
 - c. Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit must be deemed to be engaged by such employing unit for all the purposes of the North Dakota unemployment compensation law whether such individual was hired or paid directly by such employing unit or by such person, if the employing unit had actual or constructive knowledge of the employment.
17. "Employment" means:
- a. Any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date, and subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by:
 - (1) Any officer of a corporation. If a corporate officer is employed by a corporation in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the officer or by the officer's parent, child, or spouse, or by any combination of them, the corporation with the concurrence of the officer may exclude that officer's service from employment as of the first day of January of any calendar year if, during January of that year, the corporation files a written

application to exclude the officer's service from employment or as of the formation of the corporation if, within sixty days of the formation, the corporation files a written application to exclude the officer's service from employment.

- (2) Certain managers of limited liability companies. If a limited liability company manager is employed by a limited liability company in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calendar year if, during January of that year, the limited liability company files a written application to exclude the manager's service from employment or as of formation of the limited liability company if, within sixty days of the formation, the limited liability company files a written application to exclude the manager's service from employment. This exclusion from employment does not apply to any limited liability company that is wholly owned by or operates as an Indian tribe, state or local government, or nonprofit organization with respect to services performed for those entities which are required by federal law to be covered under the North Dakota unemployment compensation law.
- (3) Any individual who, under the provisions of subdivision e, has the status of an employee.
- (4) Any individual other than an individual who is an employee under paragraph 1, 2, or 3 who performs services for remuneration for any person:
 - (a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services, for the person's principal.
 - (b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the person's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of this paragraph, the term "employment" includes services described in either subparagraph a or b performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

- b. An individual's entire service, performed within or both within and without this state if the service is localized in this state.
- c. Services covered by an election pursuant to chapter 52-05.

- d. Services covered by an arrangement pursuant to sections 52-02-14 and 52-02-15 between the bureau and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, must be deemed to be employment if the bureau has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.
- e. Services performed by an individual for wages or under any contract of hire must be deemed to be employment subject to the North Dakota unemployment compensation law unless it is shown that the individual is an independent contractor as determined by the "common law" test.
- f. Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] solely by reason of section 3306(c)(7) of that Act and is not excluded from "employment" under subdivision h. Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] by section 3306(c)(7) of that Act and is not excluded from "employment" as enumerated under subdivision h.
- g. Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization but only if the following conditions are met:
 - (1) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] solely by reason of section 3306(c)(8) of that Act; and
 - (2) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.
- h. For the purposes of subdivisions f and g, the term "employment" does not apply to service performed:
 - (1) In the employ of:
 - (a) A church or convention or association of churches; or
 - (b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.
 - (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of the person's ministry or by a member of a religious order in the exercise of duties required by such order.

- (3) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education and after December 31, 1977, in the employ of a governmental entity referred to in subdivision f if such service is performed by an individual in the exercise of duties:
 - (a) As an elected official.
 - (b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision.
 - (c) As a member of the state national guard or air national guard.
 - (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.
 - (e) In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week.
- (4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.
- (5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.
- (6) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.
- (7) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars.
- i. The term "employment" includes the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, and after December 31, 1976, in the case of the Virgin Islands, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision b and subsection 28 or the parallel provisions of another state's law), if:
 - (1) The employer's principal place of business in the United States is located in this state; or
 - (2) The employer has no place of business in the United States, but:
 - (a) The employer is an individual who is a resident of this state;
 - (b) The employer is a corporation or limited liability company which is organized under the laws of this state; or

- (c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
- (3) None of the criteria of paragraphs 1 and 2 is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
- (4) An "American employer", for purposes of this subdivision, means a person who is:
 - (a) An individual who is a resident of the United States;
 - (b) A partnership if two-thirds or more of the partners are residents of the United States;
 - (c) A trust, if all of the trustees are residents of the United States;
 - (d) A corporation organized under the laws of the United States or of any state; or
 - (e) A limited liability company organized under the laws of the United States or of any state.
- (5) The term "United States" for purposes of this subdivision includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- j. Notwithstanding subdivision b, all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.
- k. Notwithstanding any other provision of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] is required to be covered under the North Dakota unemployment compensation law.
- l. An individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:
 - (1) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and
 - (2) The place from which the service is directed or controlled is in this state.
- m. Service performed by an individual in agricultural labor as defined in subdivision a of subsection 18 when:
 - (1) Such service is performed for a person who:
 - (a) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand

dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed by an alien referred to in paragraph 2); or

- (b) For some portion of a day in each of twenty different calendar weeks, whether such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor by an alien referred to in paragraph 2) ten or more individuals, regardless of whether they were employed at the same moment of time.
- (2) Such service is not performed in agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H)(ii)(A) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(A)].
- (3) For the purposes of this subdivision, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:
- (a) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 [Pub. L. 88-582; 78 Stat. 920; 7 U.S.C. 2041 et seq.]; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
 - (b) If such individual is not an employee of such other person within the meaning of subdivision a.
- (4) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph 3:
- (a) Such other person and not the crew leader must be treated as the employer of such individual; and
 - (b) Such other person must be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on the crew leader's own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.
- (5) For the purposes of this subdivision, the term "crew leader" means an individual who:
- (a) Furnishes individuals to perform service in agricultural labor for any other person;
 - (b) Pays (either on the crew leader's own behalf or on behalf of such other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and

- (c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.
 - n. The term "employment" includes domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority, performed for a person who paid cash remuneration of one thousand dollars or more to individuals employed in such domestic service in any calendar quarter in the current or preceding calendar year.
 - o. The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal Unemployment Tax Act, provided the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of the Federal Unemployment Tax Act, and is not otherwise excluded from employment under the North Dakota unemployment compensation law. For purposes of this subdivision, the exclusions from employment in subdivision h are applicable to services performed in the employ of an Indian tribe.
18. "Employment" does not include:
- a. Service performed by an individual in agricultural labor. For purposes of this subdivision, the term "agricultural labor" means:
 - (1) Any service performed prior to January 1, 1972, which was agricultural labor as defined in this subdivision prior to such date; and
 - (2) Remunerated service performed after December 31, 1971, in agricultural labor as defined in section 3306(k) of the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.].
 - b. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in subdivision n of subsection 17.
 - c. Repealed by S.L. 1971, ch. 475, § 19.
 - d. Service not in the course of the employing unit's trade or business performed after January 1, 1951, in any calendar quarter by an individual, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purposes of the North Dakota unemployment compensation law, an individual must be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if on each of some twenty-four days during such quarter or during the immediately preceding quarter, such individual performed such service for some portion of a day.
 - e. Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a minor in the employ of the minor's father or mother and dwelling in the household of the minor's father or mother.
 - f. Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the North Dakota unemployment compensation law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment

compensation law, all of the provisions of the North Dakota unemployment compensation law are applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; but if this state is not certified for any year by the social security board under subsection c of section 3304 of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year must be refunded by the bureau from the fund in the same manner and within the same period as is provided in section 52-04-14 with respect to contributions erroneously collected.

- g. Service performed in the employ of this state or of any other state, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is owned wholly by this state or by any one or more states or political subdivisions, and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by section 3301 of the federal Internal Revenue Code, except that this provision does not apply to coverage pursuant to subsection 17 and section 52-05-03.
- h. Service with respect to which unemployment is payable under an unemployment compensation system established by an act of the Congress of the United States.
- i. Service performed:
 - (1) In any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 of the federal Internal Revenue Code, if the remuneration for such service is less than fifty dollars.
 - (2) Repealed by S.L. 1973, ch. 391, § 22.
 - (3) In the employ of a voluntary employee's beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if:
 - (a) No part of its net earnings inures, other than through such payments, to the benefit of any private shareholder or individual; and
 - (b) Eighty-five percent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses.
 - (4) In the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if:
 - (a) Admission to membership in such association is limited to individuals who are officers or employees of the United States government; and
 - (b) No part of the net earnings of such association inures, other than through such payments, to the benefit of any private shareholder or individual.

- (5) In any calendar quarter in the employ of a school, college, or university, if such service is performed by a student who is enrolled and regularly is attending classes at such school, college, or university, or by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service, that:
 - (a) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university; and
 - (b) Such employment will not be covered by any program of unemployment insurance.
 - (6) In the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, except as provided in subdivision g of subsection 17.
 - (7) As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly is attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to a state law.
 - (8) By an individual for a person as an insurance agent, as an insurance solicitor, as a real estate salesman, or as a securities salesman, if all such services performed by such individual for such persons is performed for remuneration solely by way of commission.
 - (9) By an individual under the age of eighteen in delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.
 - (10) By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this paragraph does not apply to service performed in a program established for or on behalf of an employer or group of employees.
 - (11) In the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection 25.
 - (12) By an individual under the age of eighteen as a golf caddy, except for service described in subdivisions f and g of subsection 17.
- j. Service covered by an arrangement between the bureau and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly

approved election are deemed to be performed entirely within such agency's state.

- k. Service performed for a private for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the service is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and the services are performed under a written contract between the individual and the person for whom the services are performed which provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract. For purposes of this subdivision, "landman" means a land professional who has been engaged primarily in:
 - (1) Negotiating the acquisition or divestiture of mineral rights;
 - (2) Negotiating business agreements that provide for the exploration for or development of minerals;
 - (3) Determining ownership of minerals through research of public and private records;
 - (4) Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership of minerals;
 - (5) Managing rights or obligations derived from ownership of interests and minerals; or
 - (6) Activities to secure the unitization or pooling of interests in minerals.
 - l. Service performed by an owner of a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or a limited liability company, unless the organization is treated as a corporation for purposes of federal income taxation.
 - m. Service performed as a participant in an Americorps program authorized and funded by the National and Community Service Act of 1990 [Pub. L. 101-610; 42 U.S.C. 12501 et seq.].
19. "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.
20. "Executive director" means the executive director of job service North Dakota.
21. "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of chapter 52-07.1 for weeks of unemployment in the individual's eligibility period.
22. "Fund" means the unemployment compensation fund established by the North Dakota unemployment compensation law, to which all contributions required and from which all benefits provided under the North Dakota unemployment compensation law must be paid.
23. The term "governmental unit" means the state of North Dakota and all its political subdivisions, and all of its departments and instrumentalities.

24. "Gross misconduct" means misconduct involving assault and battery, or the malicious destruction of property, or the theft of money or property.
25. "Hospital" means an institution which has been licensed as a hospital by the licensing authority of the state of North Dakota.
26. "Included and excluded service". If the service performed during one-half or more of any pay period by an individual for the person employing the individual constitutes employment, all the services of such individual for such period must be deemed to be employment, but if the service performed during more than one-half of any such pay period by an individual for the person employing the individual does not constitute employment, then none of the services of such individual for such period may be deemed to be employment. As used in this subsection, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration ordinarily is made to the individual by the person employing the individual. This subsection is not applicable with respect to services performed in a pay period by an individual for the person employing the individual, when any of such service is excepted by subdivision h of subsection 18.
27. "Institution of higher education", for the purposes of the North Dakota unemployment compensation law, means an educational institution which:
 - a. Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;
 - b. Is legally authorized in this state to provide a program of education beyond high school;
 - c. Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and
 - d. Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of the North Dakota unemployment compensation law.

28. "Localized service". Service must be deemed to be localized within a state if:
 - a. The service is performed entirely within such state; or
 - b. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.
29. "State" includes, in addition to the states of the United States of America, Puerto Rico, the District of Columbia, and the Virgin Islands.
30. "Unemployed". An individual is "unemployed" with respect to any week during which the individual performs no services and with respect to which no wages are payable to the individual, or with respect to any week during which the individual is substantially unemployed and the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount. For the purposes of this subsection, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed

in those weeks. The bureau shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of work, as the bureau deems necessary.

31. "Wages" means all remuneration for service from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of the individual's service from persons other than the individual's employing unit must be treated as wages received from the individual's employing unit. After January 1, 1951, backpay awarded under any statute of this state or of the United States must be treated as wages. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, must be estimated and determined in accordance with rules as prescribed by the bureau. For the purpose of a determination of insured status only, backpay awards after January 1, 1951, must be allocated to the quarters with respect to which they were paid. If the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over a period of employment, for the purposes of a determination of insured status only, the wages must be allocated to weeks or quarters in accordance with regulations prescribed by the bureau. Such regulations must, so far as possible, produce results reasonably similar to those which would prevail if the individual were paid the individual's wages at regular intervals. The term "wages" does not include:
- a. The amount of any payment made after January 1, 1951, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment to, or on behalf of, an individual or any of the individual's dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it or for such individuals generally and their dependents or for a class or classes of such individuals, or for a class or classes of such individuals and their dependents, on account of:
 - (1) Sickness or accident disability but, in the case of payments made to an employee or any of the employee's dependents, this paragraph excludes from the term "wages" only payments which are received under a workforce safety and insurance law;
 - (2) Medical and hospitalization expenses in connection with sickness or accident disability; or
 - (3) Death.
 - b. The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made after January 1, 1951, by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit.
 - c. The amount of any payment made after January 1, 1951, by an employing unit to, or on behalf of, an individual performing services for it or the individual's beneficiary:
 - (1) From or to a trust described in section 401(a) of the federal Internal Revenue Code which is exempt from tax under section 501(a) of the federal Internal Revenue Code at the time of such payment unless such

payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust; or

- (2) Under or to an annuity plan which, at the time of such payments, is a plan described in section 403(a) of the federal Internal Revenue Code.
- d. The amount of any payment made by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under section 3101 of the federal Internal Revenue Code with respect to services performed after January 1, 1951.
- e. Remuneration paid after January 1, 1951, in any medium other than cash to an individual for services not in the course of the employing unit's trade or business.
- f. Dismissal payments before December 31, 1951, which the employing unit legally is not required to make.
- g. Any payment made to, or on behalf of, an employee or the employee's beneficiary under or to an annuity contract described in section 403(b) of the federal Internal Revenue Code, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise, under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal Internal Revenue Code, or to supplemental pension benefits under a plan or trust described in any of the foregoing provisions to take into account some portion or all of the increase in the cost of living as determined by the secretary of labor since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.
- h. Any payment made to, or on behalf of, an employee or the employee's beneficiary under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of the federal Internal Revenue Code for such payment.
- i. The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal Internal Revenue Code.
- j. Nothing in this subsection excludes from the term "wages" any employer contribution under a qualified cash or deferred arrangement as defined in section 401(k) of the federal Internal Revenue Code to the extent not included in gross income by reason of section 402(a)(8) of the federal Internal Revenue Code, or any amount treated as an employer contribution under section 414(h)(2) of the federal Internal Revenue Code.
- k. Any amount deferred under a nonqualified deferred compensation plan must be taken into account for purposes of this chapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this subdivision and the income attributable thereto may not thereafter be treated as wages for purposes of this chapter. For purposes of this subdivision, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subdivisions c, g, and h.

- I. Payments that qualify as supplemental unemployment compensation paid by an employer to former employees if those payments are paid pursuant to a plan that meets the following requirements:
 - (1) Benefits are paid only to unemployed former employees who are laid off by the employer;
 - (2) Eligibility for benefits depends on meeting prescribed conditions after termination;
 - (3) The amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state law, and the amount of regular weekly pay of that former employee;
 - (4) The duration of the benefits is affected by the fund level and employee seniority;
 - (5) The right to benefits does not accrue until a prescribed period after termination;
 - (6) Benefits are not attributable to the performance of particular services;
 - (7) No employee has any right to the benefits until qualified and eligible to receive benefits; and
 - (8) Benefits may not be paid in a lump sum.
32. "Week" means such period of seven consecutive days, as the bureau may prescribe by regulation. The bureau by regulation may prescribe that a week must be deemed to be "in", "within", or "during" that benefit year which includes the greater part of such week.

52-01-02. Employing unit to keep records - Reports of employing unit - Public inspection prohibited - Exception - Penalty. All records, including electronic records as defined in section 9-16-01, of the employers doing business in this state showing or reflecting in any way upon the amount of wage expenditure by or upon payments for services performed for those employers are always open for inspection by employees of job service North Dakota who are assigned responsibility to do so for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information necessary for the agency to administer this title. An employer who refuses to submit the employer's records, including electronic records as defined in section 9-16-01, for inspection by an identified and assigned employee of job service North Dakota is subject to a civil penalty of five hundred dollars for each offense. The agency shall collect the penalty by civil action in the name of the state and shall deposit any penalty collected under this section to the credit of the fund established by section 52-04-22. Information obtained pursuant to this section may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or the claimant's legal representative at a hearing before a hearing officer or the agency must be supplied with information from such records to the extent necessary for the proper presentation of the appeal.

52-01-03. Disclosure of information.

1. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota unemployment compensation law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the unemployment insurance division, to the extent necessary for the

proper presentation of the claimant's claim in any proceeding under the North Dakota unemployment compensation law with respect to the claim.

2. Subject to restrictions as the bureau by rule may prescribe, the information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under the North Dakota unemployment compensation law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota unemployment compensation law, and in connection with the request, may transmit any report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act. Job service North Dakota may enter into memoranda of understanding with the United States census bureau to furnish unemployment insurance data to the census bureau and for sharing of information with job service North Dakota.
3. Job service North Dakota may provide workforce safety and insurance, the labor commissioner, the driver's license division of the department of transportation, the department of human services, the department of commerce, the state tax commissioner, and the followup information on North Dakota education and training system with information obtained pursuant to the administration of the unemployment insurance program, and may enter into interagency agreements with those entities for the exchange of information that will enhance the administration of the unemployment insurance program. Any information furnished pursuant to this subsection or pursuant to interagency agreements authorized by this subsection is to be used for governmental purposes only.
4. The bureau may provide any state agency or a private entity with the names and addresses of employing units for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.
5. Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workforce safety and insurance, or the state tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.
6. The bureau shall request and exchange information as required of it under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

52-01-04. Penalty for use of list of names for political purposes. Any person who has obtained any list of applicants for work, claimants, or recipients of benefits from the bureau under any pretext, who uses or permits the use of such list for any political purpose, is guilty of a class B misdemeanor.

52-01-05. Declaration of public policy. Involuntary unemployment creates a hardship on the unemployed worker and the unemployed worker's family and leads to a state of economic insecurity. Relief from problems of involuntary unemployment imposes a statewide burden of serious consequence to the people of the state of North Dakota which can best be met by unemployment insurance for the working person who becomes unemployed through no personal fault. The legislative assembly, therefore, declares that the public good and general welfare of the citizens of the state requires that for laboring people genuinely attached to the labor market there be a systematic and compulsory setting aside of financial reserves to be used as compensation for loss of wages during periods when they become unemployed through no fault of their own.

52-01-06. Saving clause. The legislative assembly reserves the right to amend or repeal all or any part of the North Dakota unemployment compensation law at any time and there is no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by the North Dakota unemployment compensation law or by acts done pursuant thereto exist subject to the power of the legislative assembly to amend or repeal the North Dakota unemployment compensation law at any time.

52-01-07. Short title. Chapters 52-01 through 52-07.1 must be known and may be cited as the "North Dakota unemployment compensation law". Any reference within chapters 52-01, 52-02, 52-03, 52-04, 52-05, and 52-06 by the use of words "this title" are synonymous with and refer only to the North Dakota unemployment compensation law.